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## OVERVIEW OF CONSERVATORSHIP

**Y**ou have been appointed **conservator** by a **probate court** judge. A conservator is a person or organization chosen to protect and manage the personal care or finances, or both, of someone who has been found by a judge to be unable to do so. That person is called the **conservatee**.

There are all kinds of conservatees. Many are elderly people, while some are younger people with temporary or permanent mental or physical disabilities. They come from all walks of life and many cultures. What they have in common is that they are human beings who need help to live the best life possible.

Some conservatees can no longer shop for food or cook; others need help bathing and dressing. Some need medical care or help cleaning the house. Others can't drive and need help getting around. Some conservatees are isolated and need social activities and contact with other people.

Still other conservatees can't keep track of their money or remember to pay their bills. Some give away large sums of money to strangers; others need help managing their investments.

Just as there are many kinds of conservatees, there are many kinds of conservators. What conservators have in common is their willingness to help someone who needs assistance in making his or her way in the world. A conservator might be the conservatee's wife, husband, daughter, son, mother, father, brother, sister, other relative, or friend. If there is no suitable relative or friend who is willing to serve, the conservator might be a private professional conservator or a county agency called a **public guardian** or public conservator.

You have been appointed conservator because someone—your parent, spouse, child, or other relative or friend—needs help, and you are willing to lend a hand. You are the conservator because you care about the conservatee, and this handbook has been written to help you carry out your duties.

The position of conservator is one of great trust and responsibility. The court and the conservatee are trusting you to follow the law and to act in the conservatee's best interest. You should make choices that support, encourage, and assist the conservatee's capabilities and wishes.

You are authorized to make decisions for the conservatee, but in certain situations you must get a judge's approval first. Your lawyer will help you **file a petition** whenever you need to ask for court approval for a specific action.

## 1. Duties of Conservators of the Person and Conservators of the Estate

The court appoints a **conservator of the person** to help someone take care of his or her daily needs. When someone needs help managing his or her finances, the court appoints a **conservator of the estate**. Often a court will appoint one person to be both conservator of the person and conservator of the estate.

Once you are appointed as conservator, it becomes your responsibility or legal duty to provide this help, depending on the type of your appointment.

### BRIEF SUMMARY OF YOUR DUTIES AS CONSERVATOR OF THE PERSON

- You arrange for the conservatee's care and protection.
- You decide where the conservatee will live.
- You make arrangements for the conservatee's
  - Health care
  - Meals
  - Clothing
  - Personal care
  - Housekeeping
  - Transportation
  - Recreation

- You may be required to report to the court on the conservatee's current status. See Chapter 6.

See Chapter 4 for more information on the duties of a conservator of the person.

## **BRIEF SUMMARY OF YOUR DUTIES AS CONSERVATOR OF THE ESTATE**

- You manage the conservatee's finances.
- You locate and take control of the conservatee's **assets**.
- You collect **income** due to the conservatee.
- You make a budget to show what the conservatee can afford.
- You pay the conservatee's bills.
- You invest the conservatee's money.
- You protect the conservatee's assets.
- You **account** to the court and to the conservatee for your management of the conservatee's assets.

See Chapter 5 for more information on the duties of a conservator of the estate.

## **2. Types of Conservatorships**

There are several types of conservatorships. In each type, the court may appoint a conservator of the person, a conservator of the estate, or both.

### **A. Probate Conservatorships**

**Probate conservatorships** are so called because they are based on laws found in the California Probate Code. This handbook focuses mainly on the probate conservatorship, because it is the most common type of California conservatorship. A probate conservatorship may be a **general** or a **limited conservatorship**; in addition, a **temporary conservatorship** may need to be set up until a permanent conservator can be appointed (see the discussion that follows).

- **General conservatorships** These are set up for adults who can't handle their own finances or care for themselves. These conservatees are often older people with limitations caused by aging, but they also may be younger people who have been seriously impaired—as the result of an auto accident, for example.
- **Limited conservatorships** These may be set up for adults with **developmental disabilities** who cannot fully care for themselves or their property, but who do not need the higher level of care or help given under a general conservatorship. Developmental disabilities include mental retardation, epilepsy, cerebral palsy, and autism that began before age 18. They also include conditions that are similar to mental retardation or that require similar treatment. For someone with more extensive developmental disabilities, the court may decide to set up a general conservatorship.

**Tip for limited conservators: Read Chapter 3 first** Chapter 3 explains limited conservatorships. If you are a limited conservator or a general conservator of a person with developmental disabilities, read Chapter 3. It will help you determine which other parts of this handbook apply to you. If you are unsure which information in this handbook applies to your limited conservatorship, check with your lawyer. **L**

- **Temporary conservatorships** These may be set up when a person needs immediate help. A judge may appoint a temporary conservator of the person or of the estate, or both, for a specific period until a permanent conservator can be appointed. A temporary conservator arranges for temporary care, protection, and support of the conservatee and protects the conservatee's property from loss or damage.

**Tip for temporary conservators: Read Chapter 2 first** Chapter 2 will help you determine which other parts of this handbook apply to you.

## B. Lanterman-Petris-Short (LPS) Conservatorships

**Lanterman-Petris-Short conservatorships** are so called because they are based on the Lanterman-Petris-Short Act, a 1969 law named after its sponsors in the California legislature. They are also called **LPS conservatorships**, a term that will be used throughout the rest of this handbook.

An LPS conservatorship must be created to arrange for certain kinds of very restrictive living arrangements and extended mental health treatment for people unable to provide for their own needs for food, clothing, or shelter as a result of a mental disorder or chronic alcoholism, and who cannot or will not agree to the arrangement or treatment voluntarily. Although a private citizen may be appointed an LPS conservator, the appointment process must be started by a local government agency, usually a county's public guardian or public conservator.

LPS conservatorships are not covered in this handbook. If you are an LPS conservator of an estate, you may find some of the information in Chapter 5 helpful, but ask your lawyer about any differences that may affect your duties. You might also discuss with your lawyer the possibility of seeking appointment as probate conservator of the estate while continuing as LPS conservator of the person. It is generally much more convenient, efficient, and less expensive to be a probate conservator rather than an LPS conservator of someone's estate. **L**

### 3. Getting Started

Before you may begin to handle the conservatee's affairs, you must take certain steps to **qualify** as conservator. Once you have qualified, you must obtain, fill out, and file with the court an official **Judicial Council** form, called **Letters of Conservatorship**, or just **Letters**. A blank copy of this form (form GC-350) is reproduced in Appendix E, at the back of this handbook. Appendix F also tells you how to get copies of all of the Judicial Council forms you may need in your conservatorship.

#### A. Qualifying to Serve as Conservator

After the court hearing on your request to be appointed conservator, the judge must sign and the court must file its order appointing you as conservator. Before you can take any action as conservator, however, you must qualify for this office by

- Signing an acknowledgment that you received a statement describing the duties and liabilities of the office of conservator and also that you received a copy of this handbook. (The acknowledgment is Judicial Council form GC-348, designed for this purpose. A blank copy is included in Appendix F, at the back of this handbook.)
- Obtaining a **bond**, when one is required. (A bond is required in most cases to guarantee proper performance of the duties of the conservator of the estate.) **L**

- Signing an oath, or affirmation, that you will perform your duties as conservator according to law. (This affirmation is part of the Letters of Conservatorship.)
- Filing these papers with the court clerk. **L**

**Ask the court for its local supplement to this handbook** Most superior courts have a local supplement to this handbook. These may have additional information about local court requirements. Many also have important information about local community resources that may be available to assist you or the conservatee. If you did not receive a local supplement when you received this handbook, check with the court clerk to make sure you have all the local materials you need.

## B. Letters of Conservatorship

After the judge appoints you conservator and you have qualified for the appointment, you must obtain your Letters of Conservatorship from the court clerk. Your Letters show your authority to act as conservator. They prove that you were appointed conservator of the person, conservator of the estate, or both, and that you qualified for the office.

Some of the things that the judge has authorized you to do are spelled out in your Letters, but many actions you can take affecting the conservatee's life won't be listed. These permitted actions are called **powers**, and they are set out in the California Probate Code. Consult your lawyer and review other sections of this handbook to learn of powers you have that may not be stated in your Letters. **L**

**Powers not specified in Letters** See Chapter 4 for the main discussion of the powers and duties of conservators of the person, and Chapter 5 for the main discussion of the powers of conservators of the estate. **L**

**Using certified copies of your Letters** You will often need to show or provide a **certified copy** of your Letters whenever someone requires official proof of your authority to act as conservator.

The original Letters of Conservatorship that you sign is filed and kept in the court's file. To get certified copies of your Letters, ask a clerk in the court clerk's office to copy the Letters and place the court seal and the date of the certification on the copies. A certified copy must have an original seal; a photocopy of the certified copy is not acceptable. The clerk will charge a fee for each certified copy.

Contact your lawyer if you don't receive your certified copies of your Letters within a few days after you have completed the steps necessary to qualify as conservator following your appointment. **L**

**Keep recently certified copies of Letters on hand** The copies of Letters you provide or show to others must be *recently certified*. For example, to transfer the conservatee's bank accounts and stocks into your possession as conservator, you must provide to the bank, to the securities broker, or directly to the company that issued the stock (or to a special kind of agent for the company, called a transfer agent), a copy of your Letters certified within the last 60 days. Because you must pay a fee for each certified copy, don't order more than you expect to use right away. Order updated certified copies from the court clerk whenever you need additional copies.

## EXAMPLES OF ACTIVITIES FOR WHICH YOU NEED CERTIFIED COPIES OF YOUR LETTERS

- To enter a change of address for the conservatee at the post office
- To open a bank account for the conservatee's money
- To transfer the conservatee's bank accounts, stocks, mutual funds, and bonds in one or more accounts into your name as conservator
- To get into the conservatee's safe deposit box and to open a new safe deposit box in your name as conservator
- To prove to doctors and hospitals that you are authorized to **consent** to the conservatee's medical treatment, if the court has given you that authority
- To sign agreements such as leases and home-care contracts for the benefit of the conservatee
- To request information about the conservatee's affairs from government agencies and private businesses, pension plans, and others

- To apply for government or other benefits on behalf of the conservatee
- To ask lawyers (other than your own lawyer) about many kinds of legal matters concerning the conservatee
- To gather the conservatee's assets from anyone who has been holding them for safekeeping

## C. Working with Others Involved in the Conservatorship

Before making major decisions, discuss your plans with the conservatee, the other conservator (if there is one), your lawyer, and the conservatee's family if appropriate. There may be people involved with the conservatee who have legal rights to object to your actions. A few minutes of discussion may prevent hours of dispute and unnecessary legal costs later.

If there is another conservator, it is important that the two of you work together and communicate frequently. Since disagreements between conservators can harm the conservatee, a judge may replace one or both conservators if they can't get along.

## D. Working with Your Lawyer

Communication between you and your lawyer is very important. Set up a procedure for keeping each other informed about the conservatorship and what each of you is doing. You and your lawyer should decide early on which of you will be responsible for various conservatorship tasks such as

- Gathering information about the conservatee and his or her assets or business affairs
- Seeing that the persons who have the right to be advised of certain actions and court proceedings are in fact notified in a timely way
- **Recording** Letters of Conservatorship
- Paying certain expenses
- Keeping records of the conservatee's financial transactions
- Keeping track of when certain things must be done



It's a good idea to ask your lawyer to give you copies of all papers he or she files with the court in the conservatorship, and copies of all but the most routine correspondence with third parties that comes into or goes out of the lawyer's office concerning the conservatorship.

Your lawyer is a valuable resource during the conservatorship. You should check with your lawyer before taking significant actions that affect the conservatee or his or her property. Many such actions require a judge's approval before you take them. For example, you should consult with your lawyer ahead of time if you wish to

- Move the conservatee to a new home or to a different kind of treatment or **care facility**
- Sell the conservatee's home or other real estate
- Make gifts of the conservatee's property or attempt to change the conservatee's will or estate plan
- Make a major medical decision for the conservatee
- Invest the conservatee's property, or change investments the conservatee made before your appointment as conservator
- Borrow money on behalf of the conservatee
- Become involved in a lawsuit on the conservatee's behalf

## 4. Conservators Who Live Out of the Area

If you live in a different county or state than the conservatee, the judge must be sure that you can carry out your duties as conservator from that distance. The court expects you to be as good a conservator as if you lived near the conservatee.

See Chapter 4, Section 10, for helpful information for a conservator of the person who does not live in the conservatee's area.

## 5. The Conservatee's Rights

When a person becomes a conservatee, he or she does not necessarily lose the right to take part in important decisions affecting his or her property and way of life. All conservatees have the right to be treated with understanding and respect and to have their wishes considered. They have all basic human rights as well, and the right to be well cared for by you.

The conservatee has the right to ask questions and to express concerns and complaints about the conservatorship and your actions as conservator. The conservatee may ask the court to review your handling of the conservatorship if disputes can't be worked out between you. Even if the conservatee does not take direct action, the court will periodically send a person, called a **court investigator**, to see the conservatee, to inquire about his or her circumstances and desires, and to advise the conservatee of his or her rights. The court may also appoint a lawyer to represent the conservatee.

### THE CONSERVATEE'S RIGHTS

The conservatee generally keeps the right to

- Directly receive and control his or her salary
- Make or change a will
- Marry, unless a judge has determined he or she does not have the capacity to do so
- Receive personal mail
- Receive visits from family and friends, unless a judge has ordered restrictions on a person's visits or other contact with the conservatee
- Be represented by a lawyer
- Ask a judge to change conservators
- Ask a judge to end the conservatorship
- Vote, unless a judge decides the conservatee isn't capable of exercising this right

- Control personal spending money, called an **allowance**, if the judge has authorized you to pay it directly to the conservatee
- Make his or her own medical decisions, unless a judge has taken away that right and given it to you
- Enter into business transactions, to the extent reasonable to provide the necessities of life to the conservatee or to his or her minor children
- Engage in other activities the court expressly allows him or her to do, at the time of your appointment, or a later time following a court hearing on a request for authority to engage in the activity

If the conservatee is a patient in a board-and-care home, nursing home, or other care facility, a state law called the Patient's Bill of Rights applies. This law lists a patient's personal, social, financial, and medical rights in the facility, including the right to privacy. As a patient, a conservatee must be given a copy of this Bill of Rights when he or she is admitted to the facility, and it must be posted in an obvious place in the facility.

## 6. Duty to Notify the Court of Possible Changes in the Conservatee's Marriage or Domestic Partnership

The law gives the husband or wife of a proposed conservatee, or the **domestic partner** (as that term is defined in the Family Code) of an unmarried conservatee, the second highest priority of appointment as conservator, behind only the person selected by the proposed conservatee. However, that high priority may no longer be appropriate if the relationship has ended or has changed in any significant way.

The law requires a proposed conservatee's spouse or domestic partner who is seeking to be appointed conservator to reveal in the petition for appointment of conservator that the relationship has ended or that certain steps have been taken to significantly change it. In that event, the court may appoint the petitioning spouse or domestic partner, but only on a stronger than usual showing that the appointment would be in the conservatee's best interests despite the change in the relationship between the conservator and the conservatee.

The same concerns exist when the marital relationship or the domestic partnership between a conservator and a conservatee ends or changes after the spouse or domestic partner has been appointed. In that event, the law requires that the

conservator spouse or domestic partner fully disclose to the court and to any other conservator that his or her relationship to the conservatee has ended or has changed.

A conservator who is not married to the conservatee and is not the conservatee's domestic partner also needs to know when the conservatee's marriage or domestic partnership with someone else has ended or has significantly changed. In that event, the law requires the spouse or domestic partner of the conservatee to fully disclose to the conservator that the relationship has ended or has changed.

### **A. When You Are Married to or the Domestic Partner of Your Conservatee**

If you are the husband or wife of your conservatee, or his or her domestic partner, you must give written notice to the probate court in the conservatorship proceeding (and must mail a copy of the notice to the conservatee and to any other conservator) if you become a party to an action for legal separation, for dissolution of your marriage, or for an adjudication of nullity of your marriage, or if your domestic partnership is terminated in any of the ways provided in the law. You must do this within 10 days of the date the action concerning your marriage was filed or the domestic partnership was terminated.

On receipt of the notice, the probate court may set a hearing and require you to show cause why your appointment as conservator should not be ended and a new conservator appointed. The court may also appoint a lawyer for the conservatee to protect his or her interests at the hearing. You would not automatically be removed as conservator after the hearing, but would have to show, by a higher than usual amount of proof, that your continued appointment as conservator would be in the best interests of the conservatee despite the action concerning your marriage or the termination of your domestic partnership.

### **B. When Your Conservatee Has a Spouse or Domestic Partner Who Is Not a Conservator**

If you are not the spouse or the domestic partner of your conservatee, but he or she is married or has a domestic partner, the spouse or the partner must disclose to you and to any other conservator that any of the actions mentioned in Section 6(A) concerning the marriage have been filed, or that the domestic partnership has been terminated, within the same 10-day period. When you or the conservator of the estate receive this disclosure, you should immediately consult with your lawyer to help you decide what steps, if any, should be taken to protect your conservatee. If there is more than one conservator or lawyer, all of you should work closely together. **L**

Many, if not most, domestic partnerships are between persons of the same sex. However, you should be alert to the possibility of a domestic partnership between elderly persons of the opposite sex. An unmarried man and an unmarried woman can enter into a domestic partnership if either is over the age of 62 and either is eligible for social security, old-age insurance, or Supplemental Security Income (SSI) benefits for aged individuals (the minimum age for the latter is 65).

## 7. Changing Conservators or Ending the Conservatorship

When will your responsibilities as conservator end? They may end when the conservatee dies, when a judge ends the conservatorship, or when a judge appoints someone else as conservator in your place. In any case, you must wind things up before a judge will release you from your conservatorship duties.

The conservatorship will end when the conservatee dies. It may also end when a judge decides it is no longer needed, for example, because the conservatee has become able to handle his or her own affairs or because the assets of the **conservatorship estate** have been used up for the conservatee's care.

The conservatorship may continue, but with a new conservator. This happens when the first conservator dies or resigns. It may also happen because a judge has withdrawn the first conservator's appointment and has replaced him or her by appointing a successor conservator.

See Chapter 8 for more information about the end of a conservatorship or a change in conservators.